



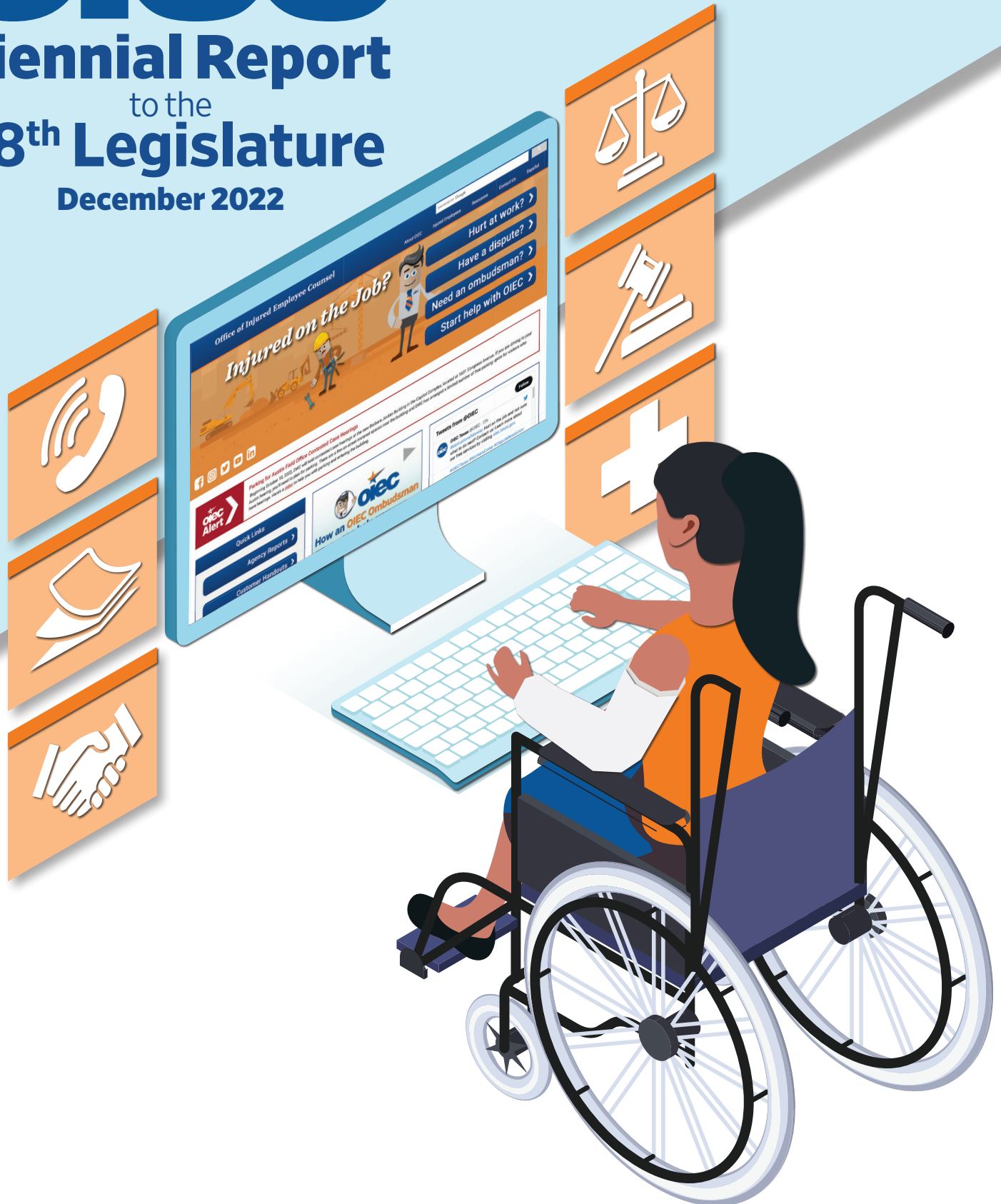
OIEC

Biennial Report

to the

88th Legislature

December 2022





December 31, 2022

The Honorable Greg Abbott, *Governor*

The Honorable Dan Patrick, *Lieutenant Governor*

The Honorable Dade Phelan, *Speaker of the House*

The Honorable Members of the Texas Legislature

Dear Governors, Speaker, and members of the Texas Legislature:

In accordance with Section 404.106 of the Texas Labor Code, I am pleased to submit the Office of Injured Employee Counsel's Biennial Report to the 88th Texas Legislature.

This report provides an update of the activities of the agency, recommendations for legislative action, and other issues for consideration. As directed, we have included an analysis of the ability of the Texas workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

I am available to discuss any of the issues contained in the report. Please contact me at (512) 804-4170 or jessica.barta@oiec.texas.gov with any questions or if you need additional information.

Respectfully submitted,

Jessica Barta
Public Counsel



Mission Statement

Our mission is to assist, educate, and advocate on behalf of the injured employees of Texas.

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Employees

The **Office of Injured Employee Counsel (OIEC)** is appropriated 162 full-time equivalent employees.

OIEC's central office is in Austin, Texas and is home to 12% of OIEC's staff. The remaining 88% of OIEC staff are located in offices across the state.

Statutory authority

Chapter 404 of the Texas Labor Code provides the statutory authority for OIEC.

OIEC is administratively attached to the **Texas Department of Insurance (TDI)**. TDI provides budget planning and purchasing; personnel services; facilities; and information technology to OIEC.

OIEC and the **Texas Department of Insurance, Division of Workers' Compensation (DWC)** share office space in 20 field offices throughout Texas.

Agency Overview

Field Office Locations

FIGURE 1



Who We Are

PUBLIC COUNSEL

The Public Counsel serves as the agency's executive director and is appointed by the Governor with the consent of the Senate. The Public Counsel serves a two-year term that expires February 1st of each odd-numbered year. The current Public Counsel, Jessica Barta, has served in this role since 2014 and was reappointed by Governor Abbott on February 8, 2021.

ADMINISTRATION AND OPERATIONS

OIEC's administration and operations staff are located in Austin and are comprised of the Public Counsel, Deputy Public Counsel, General Counsel, liaisons for human resources, budget, travel, and purchasing as well as administration support staff.

CALL CENTER AGENT (CCA)

A CCA is the first point of contact for injured employees at OIEC. CCAs answer questions and educate injured employees about their rights and responsibilities within the workers' compensation system.

CUSTOMER SUPPORT SPECIALIST (CSS)

A CSS identifies potential disputes and attempts to resolve them through early intervention efforts including communicating with adjustors and requesting medical records. If a dispute cannot be resolved, it is assigned to an ombudsman.



OMBUDSMAN PROGRAM

Ombudsmen assist unrepresented injured employees prior to and during proceedings and appeals before DWC. This includes requesting supporting documentation, ensuring all issues are identified, and if possible, helping reach agreements prior to a proceeding.

LEGAL SERVICES PROGRAM

Legal Services' attorneys assist OIEC staff through all phases of the dispute resolution process. They participate in rule proposals before DWC and file briefs in cases pending before appellate courts on behalf of injured employees as a class.



\$1,750

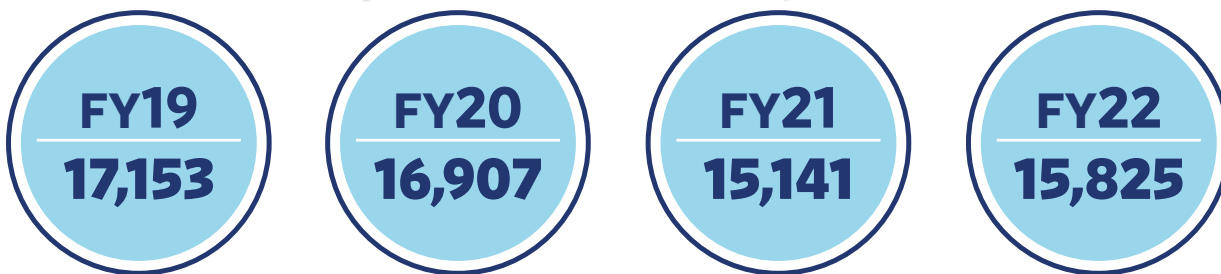
Average amount saved by an injured employee using an ombudsman instead of hiring an attorney.

The Legislature created the Office of Injured Employee Counsel (OIEC) in 2005 as an independent state agency to advocate for the interests of injured employees, individually and as a class. OIEC's mission is to assist, educate, and advocate on behalf of the injured employees of Texas. OIEC ombudsmen assist injured employees in nearly 50%* of Texas Department of Insurance, Division of Workers' Compensation's (DWC) dispute proceedings, compared to insurance carriers who are

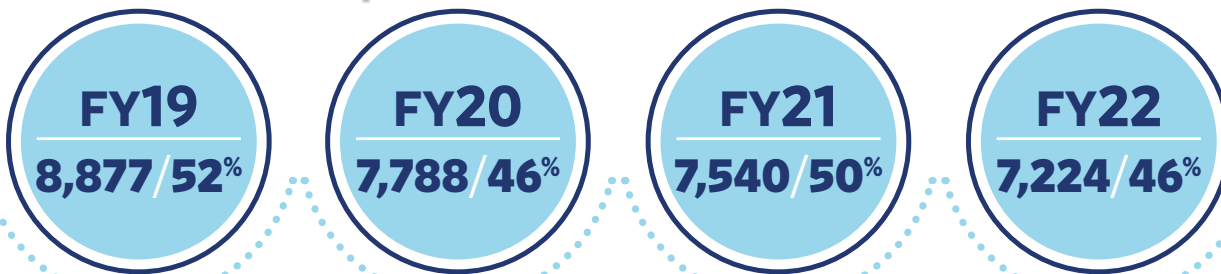
almost always represented by attorneys (98% of DWC's dispute proceedings). Additionally, OIEC resolves disputes prior to DWC dispute proceedings, which helps injured employees receive the benefits they deserve and saves the system time and money. OIEC staff also provide outreach and education, help first responders, and represent the interest of injured employees through rule comments, legislative hearings, and amicus briefs.

Total number of disputed issues handled by DWC

TABLE 1



Total number of disputed issues with ombudsman assistance



Source: *Texas Department of Insurance, Division of Workers' Compensation, 2022, unless otherwise indicated.

OIEC Assistance Overview

STEP 1



CONTACTING OIEC

The injured employee's first contact with OIEC is with a **call center agent (CCA)** who helps answer questions and educates the injured employees about their rights and responsibilities in the workers' compensation system.

STEP 2



EARLY INTERVENTION

The **customer support specialist (CSS)** identifies issues and attempts to resolve disputes between the injured employee and the insurance carrier. If the dispute is not resolved, the injured employee is referred to an ombudsman, who is trained in workers' compensation law.

STEP 3



BENEFIT REVIEW CONFERENCE

A **benefit review conference (BRC)** is an informal mediation between the parties before DWC. Prior to the BRC, the ombudsman assists the injured employee with obtaining all of the necessary documents and information relevant to the dispute. The ombudsman helps to present the injured employee's position at the BRC.

STEP 4



CONTESTED CASE HEARING

If a dispute remains unresolved, a **contested case hearing (CCH)** may be held. A CCH is a formal hearing before an **administrative law judge (ALJ)** at DWC. The ombudsman assists the injured employee with presenting evidence and making arguments at the hearing. An ALJ issues a written decision within 10 days of the hearing.

STEP 5



APPEALS PANEL

Either party may file a written appeal of the CCH decision. An ombudsman can help an injured employee file an appeal by requesting a review by the Appeals Panel at DWC. Ombudsmen also assist with responses to appeals filed by insurance carriers. This is the last step in the dispute resolution process in which OIEC assistance is available.

OIEC is statutorily prohibited from assisting at this point.



JUDICIAL REVIEW

Either party can appeal a DWC decision to district court. This is the final step in the dispute resolution process. An injured employee will need to hire an attorney or file the claim *pro se*.

211,938

Phone calls and emails to assist injured employees



Early Intervention

The call center agents are the first point of contact at OIEC. They educate injured employees on their rights and responsibilities in the workers' compensation system and answer questions about the dispute resolution process. OIEC has a statewide call center with agents available in both English and Spanish. The customer service staff (CSS) in each office work with injured employees to identify issues and attempt to resolve disputes. In FY 22, OIEC resolved 62% of disputed issues prior to a DWC dispute proceeding.

The CSS can also refer injured employees to local, state, federal, or social services agencies. Over the last several years, the agency has focused on making communication with injured employees more efficient and effective.

OIEC has also redesigned the agency website, utilized infographics, and rewritten communication to reflect plain language.

OIEC staff who speak Spanish are paired with Spanish-speaking injured employees resulting in reduced translation costs and improved communication.

TABLE 2

Number of individual claims with OIEC assistance

FY19
21,550

FY20
17,741

FY21
24,981

FY22
20,290

Disputed issues resolved by OIEC prior to a DWC proceeding

FY19
4,722

FY20
4,077

FY21
4,765

FY22
4,550

Benefit Review Conference (BRC)



45%

Percent of disputed issues with ombudsman assistance at a BRC.

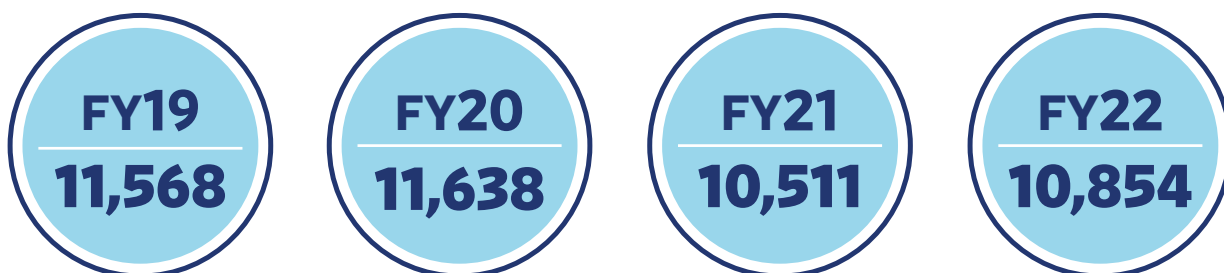
A **benefit review conference (BRC)** is an informal mediation held by DWC to attempt to resolve a workers' compensation claim dispute, usually between the injured employee and the insurance carrier. An injured employee may hire an attorney to assist them or request free assistance from an OIEC ombudsman. Few injured employees choose to represent themselves at a BRC. Prior to a BRC, an ombudsman will help explain the dispute process and expectations, identify issues

to dispute, assist with obtaining supporting medical documentation, and exchange information with the other parties. More than one issue may be presented at a BRC, and parties work to resolve as many issues as possible.

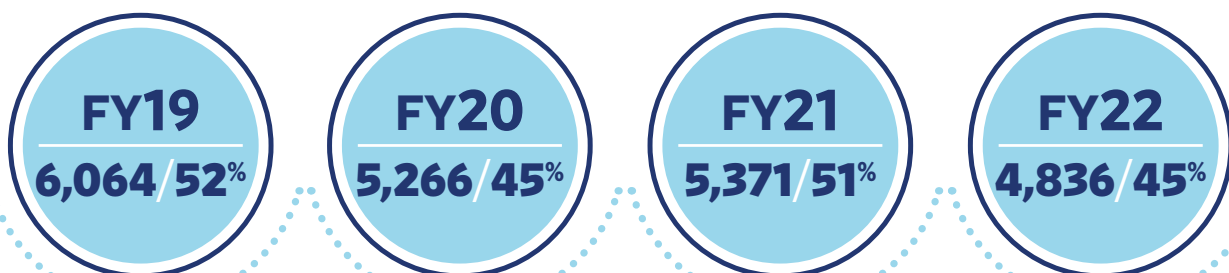
The majority of disputes OIEC assists with are related to extent of injury, impairment rating, and maximum medical improvement. As a result, most of the disputes OIEC assists with involve multiple issues.

TABLE 3

Total number of disputed issues handled by DWC at BRCs



Issues with ombudsman assistance at the BRC





48%

Percent of disputed issues with ombudsman assistance at a CCH.

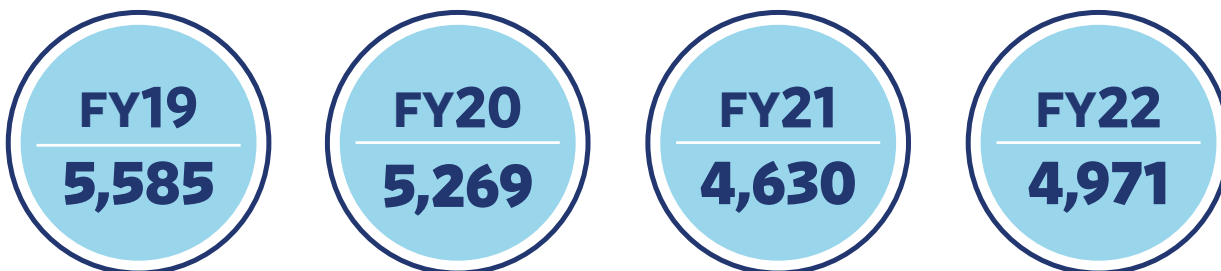
A **contested case hearing (CCH)** is a formal hearing before DWC during which the injured employee and insurance carrier present evidence before an administrative law judge (ALJ).

A CCH requires an opening and closing statement as well as direct and cross examination of witnesses. Similar to the

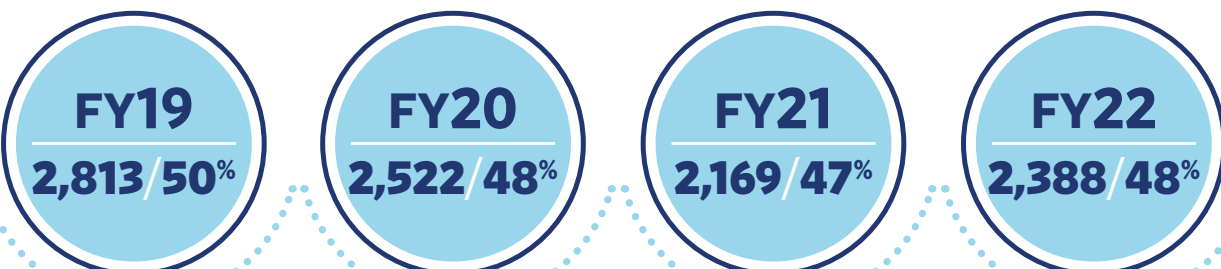
BRC level, an ombudsman will help the injured employee gather evidence and will assist in presenting their position to the ALJ. At the CCH level an injured employee may hire an attorney or request free assistance from an ombudsman. Few employees choose to represent themselves at a CCH. A CCH may also include more than one issue.

TABLE 4

Total number of disputed issues handled by DWC at CCHs



Issues with ombudsman assistance at the CCH



Appeal and Judicial Review



53%

Percent of appeals with ombudsman assistance.

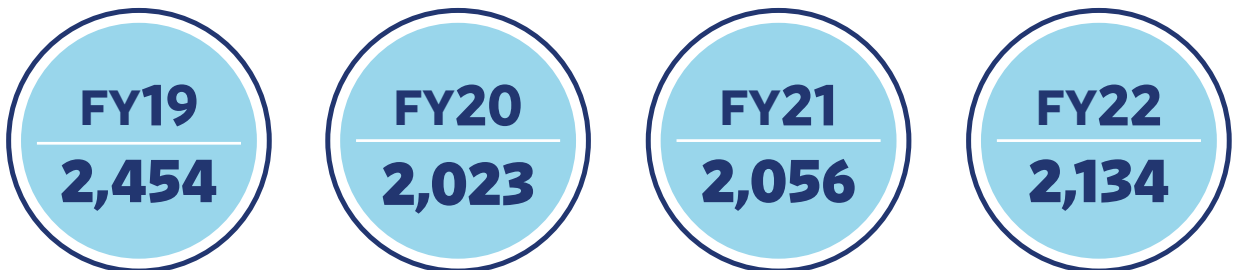
Either party may file an appeal of the CCH decision. Appeals are in written format and no new evidence may be submitted. An ombudsman can help an injured employee file an appeal with the DWC Appeals Panel and can also assist injured employees with drafting responses to appeals filed by insurance carriers. Just as disputes are declining systemwide, so are the number of appeals. However, the portion in which

OIEC assists continues to increase. In FY22, OIEC assisted in 53% of all appeals requested with the DWC.

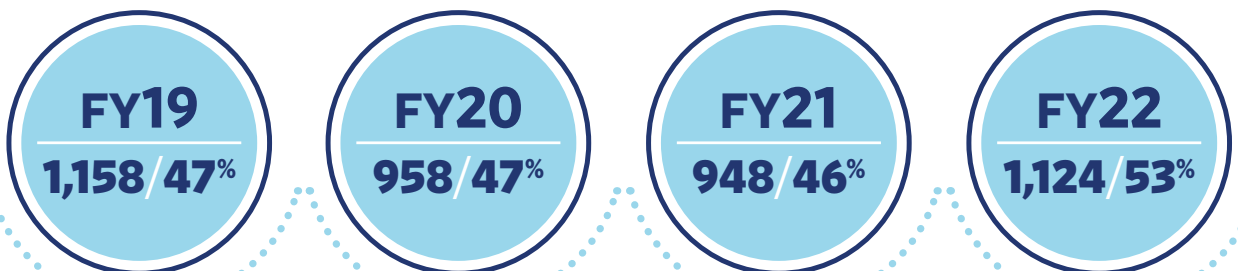
Either party can file an appeal of a DWC decision to district court. Judicial review is the final step in the dispute resolution process. OIEC is statutorily prohibited from assisting at this point.¹ Injured employees may seek attorney representation or represent themselves.

Total number of issues appealed in the Texas workers' compensation system

TABLE 5



Issues appealed with ombudsman assistance





ISSUE:

When an injury occurs on the job, injured employees must follow certain rules to report their injuries and file a claim for benefits timely. If the claim is accepted by the insurance carrier as work-related (or compensable), then injured employees may receive benefits to cover the cost of their medical care and compensate them for their time away from work and any permanent impairment they sustain.

If an insurance carrier denies a workers' compensation claim because it believes the injury was not work-related or the injured employee did not provide enough medical evidence to show how their injury caused their medical conditions, then the burden falls on the injured employee to show how their injury was in fact, work-related and that the accident or injury was the "producing cause" of the employee's medical conditions.

Authorize Compensation for Doctors Who Provide Causation Letters to Help Injured Employees Prove Their Injuries are Work-Related

LEGISLATIVE RECOMMENDATION:

Amend Texas Labor Code Chapter 408 to allow reimbursement for a medical causation narrative report, drafted by a doctor treating the injured employee, in disputes regarding extent of injury, maximum medical improvement (MMI) or impairment rating (IR).

CONT. →

TABLE 6

Percentage of disputes in FY 22 involving extent of injury/MMI/IR

BRC
65%

CCH
65%

Appeals Panel
73%

Legislative Recommendation

An August 2010 Texas Supreme Court ruling in *Transcontinental Insurance Company v. Crump* (330 S.W.3d 211) and subsequent rules adopted by DWC in response, require injured employees to provide medical evidence in claim disputes to show how their medical conditions were caused by the accident or injury “within a reasonable degree of medical probability.”

WHY IT MATTERS:

Obtaining the medical evidence needed to prove their injuries are work-related can be challenging for injured employees. Injured employees who want to dispute a designated doctor’s (DD) opinion on maximum medical improvement (MMI) or impairment rating (IR) also face an uphill battle without medical evidence because DWC requires the extent of an employee’s injury to be resolved first, regardless of whether the insurance carrier has disputed the injury.

More and more disputes at every level require a medical causation letter. These disputes tend not to resolve at a BRC and go on to a Contested Case Hearing (CCH) and even the Appeals Panel dispute resolution levels. Without medical causation letters, injured employees will continue to lose these disputes. In FY 22, insurance carriers prevailed in roughly 70-75% of disputes involving extent of injury, designated doctor (DD) maximum medical improvement (MMI) date, and DD impairment rating (IR).

Insurance carriers have the tools and resources to request peer review reports from medical experts or pay for doctors to testify in claim disputes.

Most injured employees do not have the financial means to pay for a medical causation letter, nor does OIEC have the money appropriated to pay for them. OIEC often tries to work with doctors to provide free causation letters whenever possible but providing injured employees access to a medical causation letter when needed to dispute their claim denial ensures that the system remains fair and just.

In FY22, almost two-thirds of disputes at the benefit review conference (BRC) involved issues needing a medical causation letter.

FY 22 Outcomes of extent of injury disputes:

TABLE 7



Challenges with Recruiting and Retaining Staff

ISSUE:

OIEC, like most state agencies, has experienced high staff turnover and increasing numbers of employee retirements in recent years. Workers' compensation is complex. Assisting unrepresented injured employees to understand their rights, navigate the system, and resolve their claim disputes requires skilled and understanding staff.

In particular, OIEC struggles to overcome significant staffing challenges, including:

- Staffing its agency headquarters in Austin and 20 field offices statewide;
- Recruiting bilingual employees (Spanish and English) to help injured employees;
- Ensuring staff have needed training, mentoring, and support to be successful and avoid burnout;
- Providing special assistance and a dedicated liaison to first responders; and
- Competing with other state and local agencies and private sector employers who can provide better salaries.

WHY IT MATTERS:

Compared to other states, Texas is unique in its efforts to provide dedicated staff to assist unrepresented injured employees and to advocate for injured employees as a class through rule comments, legislative hearings, and amicus briefs. As a result, the Texas workers' compensation system has become a model for other states. Attorney representation is low; claim costs are down; and the system continues to meet its legislative goal to treat injured employees with dignity and respect.

Although OIEC has collapsed positions in recent years to provide staff raises, the wage disparity between OIEC and other government agencies and the private sector creates a significant impediment when recruiting and retaining necessary staff.

In an effort to address this issue, OIEC requested additional appropriations this biennium to bring staff salaries to the statewide average for their specific position and to provide some additional raises for individuals based on their performance.

A recent review by the State Auditor's Office showed that 100% of OIEC employees had salaries below the midpoint for that position classification.

OIEC employee turnover in FY 2021:

All employees – **24%**

Ombudsman – **38%**

Source: State Auditor's Office, an Biennial report on classified employee turnover for fiscal year 2021, March 2022.

Maintenance Tax Financing for DWC and OIEC

ISSUE:

The workers' compensation maintenance tax paid by insurance carriers under Texas Labor Code §§403.002 and 407.103 no longer produces enough funding to cover DWC's and OIEC's legislative appropriations. Large reductions in workers' compensation insurance rates and premiums paid by Texas employers have resulted in a shrinking premium base for maintenance tax collections (50% reduction in the tax base since 2003). TDI estimates that the shrinking premium base coupled with a statutory cap on the tax rate (set at 2% of gross insurance premiums) is estimated to generate a \$9.4 million shortfall in maintenance tax collections compared to DWC's and OIEC's legislative appropriations for fiscal year 2023.²

DWC and OIEC's maintenance tax base ↓50% since 2003.

WHY IT MATTERS:

The maintenance tax, set by the Commissioner of Insurance, is self-leveling to match the amount appropriated by the Legislature. However, the maintenance tax cannot exceed the 2% statutory cap, resulting in reduced tax collections to fund DWC and OIEC's operations as insurance rates and premiums continue to fall. In the short term, can be accommodated the shortfall through careful planning and budget tools. However, without a long term solution, certain services provided by OIEC may be impacted, as well as its ability to recruit and retain necessary staff in the future.

Expansion of Virtual Dispute Resolution Proceedings

ISSUE:

Historically injured employees and insurance carriers resolved their claim disputes in person at the various DWC field offices across the state. Parties and their witnesses sometimes would travel up to 75 miles one way to resolve claim disputes, and DWC and OIEC staff often had to travel to conduct hearings in rural areas.

The COVID-19 pandemic changed everything. DWC, OIEC, and stakeholders quickly pivoted to keep dispute resolution proceedings going. BRCs and CCHs were first held by phone and then virtually through Zoom. Everyone quickly adapted. With virtual dispute resolution, DWC and OIEC could handle more disputes with fewer staff and manage workload effectively. The need to travel DWC and OIEC staff to resolve disputes disappeared. Parties liked the convenience and learned to exchange documents electronically, saving them time, money, and hassle driving to DWC field offices.

In 2020, the 87th Legislature passed House Bill 1752, requiring BRCs to be held by phone or videoconference, unless there was good cause. While BRCs continue to be virtual, DWC began holding CCHs in person again in August 2021.

DWC held over 17,000 BRCs and 5,900 CCHs by telephone or Zoom since March 2020.

OIEC ombudsman participated in half of these proceedings.

Source: Texas Department of Insurance, Division of Workers' Compensation, 2022.

WHY IT MATTERS:

Expanding the use of virtual CCHs if there is mutual agreement would allow parties to take advantage of technology to resolve their disputes more efficiently while helping OIEC to continue to fulfill its statutory mission despite critical staffing and budget challenges.



Analysis of the Texas Workers' Compensation System

Workers' Compensation – An Overview

Workers' compensation is a state-regulated insurance program that pays for medical care and some lost wages for employees who have work-related injuries or illnesses. Workers' compensation provides **"no fault"** coverage to employees, meaning that they don't have to prove the injury wasn't their fault – just that the injury happened on the job.

Every state administers their own workers' compensation system. Texas adopted its first workers' compensation law in 1913. Texas law covers work-related injuries and illnesses for employers with Texas workers' compensation insurance.

TEXAS WORKERS' COMPENSATION SIGNIFICANT DATES

- **1913** – Legislature adopted first workers' compensation law in Texas and the Industrial Accident Board was created.
- **1989** – SB 1 is passed, which completely rewrote the law and created the Texas Workers' Compensation Commission.
- **2005** – HB 7 is passed, which created the Division of Workers' Compensation, introduced networks, and made major reforms to medical and income benefits.
- **2006** – the Office of Injured Employee Counsel opens.

HOW DOES IT WORK?

Workers' compensation is a social contract between employers and employees. Employers with workers' compensation insurance receive protection from most lawsuits, and in return, injured employees receive medical and income benefits that are defined by statute and access to a quick and fair process to resolve claim disputes. This agreement is often called "the Grand Bargain."

WHAT MAKES TEXAS DIFFERENT?

Texas law allows any private employer the option of providing workers' compensation coverage to employees. Private employers without workers' compensation coverage are called nonsubscribers. Nonsubscribers may be sued by their employees if an injury occurs, and they cannot assert certain common law defenses.

Public employers (including the State of Texas and its political subdivisions) and building and construction contractors working on public projects with governmental entities must provide workers' compensation to their employees by law.

Other states either require all employers to have coverage or have numerical exceptions that require an employer to have coverage if they have a minimum number of employees.

An estimated 75% of Texas private sector employers had workers' compensation coverage in 2022, employing 83% of private-sector employees.

Source: Texas Department of Insurance, Division of Workers' Compensation, 2022.

How Do Employers Provide Workers' Compensation Coverage to Employees?



Private employers can:

- Buy a workers' compensation insurance policy;
- Get approved by DWC to self-insure (for individual employers); or
- Join a workers' compensation self-insurance group certified by TDI.

What about public employers?

- The State of Texas, University of Texas System, Texas A&M University System, and Texas Department of Transportation are self-insured.
- Political subdivisions can
 - purchase a workers' compensation insurance policy;
 - self-insure; or
 - join with other political subdivisions to form an intergovernmental risk pool.

Texas Workers' Compensation Insurance Coverage – What You Need to Know

- In 2021, 317 insurance companies wrote workers' compensation policies to employers totaling about \$2.2 billion.
- Texas Mutual Insurance Company is the largest writer with 41% of the market. Texas Mutual also serves as the “insurer of last resort,” which provides coverage to any employer who can't purchase coverage on the open market.
- Since 2003, workers' compensation insurance rates have dropped nearly 77% and the cost of coverage for employers has declined 78% to about 51 cents/\$100 of payroll.³
- Although comparing insurance costs across 50 states is complex, the Oregon Premium Ranking Study lists Texas as the 9th lowest state for workers' compensation premium costs.⁴

³Texas Department of Insurance, Division of Workers' Compensation, *Biennial Report to the 88th Legislature*, 2022.

⁴Oregon Department of Consumer and Business Services, *Oregon Workers' Compensation Premium Rate Ranking, Calendar Year 2022*, October 2022.



Meet The Agencies That Oversee The Texas Workers' Compensation System

Three state agencies, administratively attached to each other, work collectively to ensure that the Texas workers' compensation system runs smoothly and delivers injured employees the

benefits they are entitled to at a reasonable cost to Texas employers. Each agency has a unique role in the system.

Texas Department of Insurance

Commissioner of Insurance: *Cassie Brown*

Main Workers' Compensation Functions:

- Oversees the insurance market (adopts and approves policy forms and endorsements, reviews insurance rates and ensures financial solvency of insurance companies).
- Licenses, certifies, and regulates insurance companies, agents, adjusters, third party administrators, utilization review agents, Independent Review Organizations, workers' compensation self-insurance groups, and workers' compensation health care networks.
- Provides customer service, processes complaints, and enforces the Insurance Code and TDI rules.

CONT. →

Meet the Agencies

Division of Workers' Compensation

Commissioner of Workers' Compensation: *Jeff Nelson*

Main Workers' Compensation Functions:

- Oversees the Workers' Compensation Act (Title 5, Texas Labor Code), including insurance coverage reporting, injury reporting, claims handling, medical and indemnity benefits, and burial benefits. Adopts forms used for claim administration and collects claim and medical data.
- Provides customer service. Processes requests from stakeholders for official actions, including changes of treating doctor, requests for required medical examinations, and designated doctor examinations.
- Certifies self-insured employers and administers the Subsequent Injury Fund.
- Resolves individual claim disputes and medical fee disputes. Handles appeals of Independent Review Organization decisions on medical necessity disputes.
- Monitors litigation affecting the system, as well as disputes appealed to district court and the State Office of Administrative Hearings.
- Processes complaints, conducts audits and enforces the Workers' Compensation Act and DWC rules. Processes and investigates fraud referrals and works with district attorneys to prosecute various types of fraud.
- Provides return-to-work and workplace safety outreach and education to Texas employers. Collects occupational injury data for the U.S. Department of Labor.

Office of Injured Employee Counsel

Public Counsel: *Jessica Barta*

Main Workers' Compensation Functions:

- Provides customer service and conducts educational outreach to injured employees.
- Works to resolve disputes prior to a DWC dispute resolution proceeding.
- Provides free ombudsman assistance to unrepresented injured employees in DWC dispute proceedings across the state and assists injured employees with medical fee and medical necessity disputes.
- Serves as a liaison for first responders who need assistance with their claims.
- Advocates for injured employees as a class, including rule comments, legislative recommendations, and amicus briefs in key litigation affecting injured employees.

Access To Adequate, Equitable, Timely Medical Benefits



Access To Adequate, Equitable, Timely Medical Benefits

It is **imperative that injured employees** have timely access to medical care in order to maximize recovery, contain medical costs, and facilitate a quicker return to work. Prior to the COVID-19 pandemic, workers' compensation claims were on a steady decline; however, the increase in COVID-19 claims filed has disrupted a twenty-year trend in fewer claims being filed each year. Reportable workers' compensation claims filed are up 11% since 2017. DWC's COVID-19 Factsheet⁵ shows that most COVID-19 claims are not severe and about 75% of these claims receive medical treatment for less than one month.

The pandemic did place temporary constraints on access to care for injured employees who encountered restrictions on non-emergency care and dealt with concerns about contracting COVID-19 while seeking medical treatment. While the overall access to medical care for injured employees appears to be healthy, the availability of doctors who accept workers' compensation patients continues to be an issue that needs to be monitored.

Changes from 2017-2021

Number of:

- ↑ 11% - of reportable claims filed
- ↓ 10% - of physicians treating
- ↓ 35% - of chiropractors treating
- ↑ 2% - of physician assistants treating

Source: Texas Department of Insurance, Division of Workers' Compensation, *System Data Report*, 2022.

About half of injured employees receive their medical care through a workers' compensation health care network certified by TDI or administered by political subdivisions. These networks were created as part of the 2005 legislative reforms. According to the Workers' Compensation Research Group's 2022 Workers' Compensation Network Report Card, the vast majority of injured employees report that the medical care for their work-related injury was good or better than their routine medical care, but these results vary by network. The report also states more than half of injured employees reported "no problem getting the medical care they felt they needed" for their work-related injury (some networks had better results than non-network claims). Timeliness of care has also improved for injured employees over the last decade for several reasons including physician extenders and the introduction of certified health care networks.

However, injured employees' perceptions about access to care and the timeliness of initial non-emergency care have changed a bit since the pandemic. DWC data shows that the average number of days from the date of injury to the first non-emergency medical visit increased for non-network claims from 2019 to 2022 (from 4.9 days CONT. →

⁵ See <https://www.tdi.texas.gov/wc/information/coronavirus.html>.

Access To Adequate, Equitable, Timely Medical Benefits

for non-network claims to 5.5 days). Additionally, the percentage of non-network injured employees who reported “no problem” getting the care they needed declined from 61% in 2019 to 53% in 2022, as well as the percentage of non-network injured employees who said their ability to schedule a doctor’s appointment was the same or better than their normal health care (85% in 2019 to 76% in 2022). These changes should be monitored to see if they are only temporary impacts from the pandemic.

Texas injured employees have access to “lifetime medical” benefits for their injuries, as long as the

Percent of claims with employee attorney involvement

Texas	12%
18-State Median	31%

medical care is medically necessary and related to the compensable injury. Many other states limit injured employees’ medical benefits

by allowing the parties to settle the claim, including future medical. Injured employees who settle their claims are responsible for taking Medicare, and in some cases Medicaid’s interests, into account when accepting the settlement. To accomplish this, a portion of the injured employee’s settlement must be allocated to cover Medicare or Medicaid’s potential costs for future medical treatment.⁶ States that allow medical settlements tend to have higher attorney involvement. Texas has some of the lowest attorney involvement rates for workers’ compensation claims in the country.⁷

Compared to other states, Texas has lower medical costs per claim because of the legislative reforms

Medical costs per claim in Texas are about 24% ↓ than the median state of an 18-state comparison.

to the workers’ compensation system in 2001 and 2005. In 2001, Texas was among the highest cost states according to a

multi-state comparison by the Workers’ Compensation Research Institute.⁸ Now, Texas’ cost per claim with 12 months maturity is about 24% less than the median cost of the 18 states analyzed.

Although more claims were filed during the pandemic, total medical payments in the system did decline from about \$978 million in 2019 to \$877 million in 2021 – about a 10% decrease.

Designated Doctors. A Designated Doctor (DD) is selected by DWC to resolve questions about an injured employee’s medical condition or resolve a dispute about a work-related injury or illness. DD opinions have presumptive weight in DWC dispute resolution proceedings. DWC certifies DDs and assigns them examinations based on their credentials, an injured employee’s affected body parts, and the injured employee’s diagnosis. DD examinations can address multiple issues, including the date of an injured employee’s maximum medical improvement, the employee’s impairment rating, extent of injury, ability to return to work, and other related issues. According to DWC, over 90% of designated doctor appointments in 2021 examined either MMI or IR (or both) and 23% of these exams were for extent of injury issues.⁹

The number of DDs certified to perform examinations has been declining since 2015. In FY 2019 there were 505 DDs certified by DWC, but that number declined to 364 in FY 2021. There are also fewer licensed medical doctors (MDs) and doctors of osteopathy (DOs) now participating in the DD program. The number of chiropractors (DCs) serving as DDs has also declined. In an effort to increase the number of DDs, DWC has proposed rules to simplify DD training and testing requirements and has informally proposed a fee increase for designated doctor exams. DDs are an essential part of the workers’ compensation system, and their participation rates should continue to be monitored.

⁶ This portion of the settlement is called a Medicare Set Aside Agreement. Medicare will not pay for any medical treatment for the work-related injury until the settlement funds have been exhausted. Injured employees who settle their claims are also required to follow certain banking and reporting requirements.

⁷ See Workers’ Compensation Research Institute, *CompScope™ Benchmarks for Texas, 22nd Edition, 2022*.

⁸ See Workers’ Compensation Research Institute, *CompScope™ Medical Benchmarks for Texas, 23rd Edition, 2022*.

⁹ Texas Department of Insurance, Division of Workers’ Compensation, *System Data Report, 2022*.

Access To Adequate, Equitable, Timely Income Benefits



Adequate, Equitable, Timely Income Benefits

Income benefits replace a portion of wages an injured employee loses because of a work-related injury.

Temporary income benefits (TIBs) – TIBs are paid during the period of temporary disability (lost time from work or underemployment) while the injured employee is recovering from an on-the-job injury.

Impairment income benefits (IIBs) – IIBs are paid to compensate injured employees for permanent impairment when the injured employee reaches maximum medical improvement.

Supplemental income benefits (SIBs) – SIBs are paid to injured employees for ongoing disability after IIBs have been exhausted. Only employees with at least a 15% impairment rating and who are unemployed or underemployed as a result of their work-related injuries are eligible to receive SIBs.

Lifetime Income Benefits (LIBs) – LIBs are paid for the life of the injured employee for specific catastrophic injuries as set forth in Section 408.161 of the Texas Labor Code.

Death and Burial Benefits – Help families replace some of the money lost when an employee dies because of work related injury or illness and help to reimburse a family member or friend who paid for the funeral (up to \$10,000).

How are benefits calculated?

The amount of income or death benefits an injured employee or beneficiary can receive is based on the calculation of the injured employee's average weekly wage (**AWW** – the average amount of gross weekly wages earned during the 13 weeks immediately before the injury). This average weekly wage is then multiplied by the statutory compensation rate for each type of benefit. All income and death benefit payments are subject to statutory maximum and minimum benefit rates set by Texas Labor Code §408.047. These figures are adjusted biennially. The current statutory maximum benefit rate for TIBs, LIBs, and death benefits is \$1,112/week while the maximum benefit rate for IIBs and SIBs is \$778/week.¹⁰ Although the statutory maximum adjusts biennially, more and more injured employees, particularly higher wage earners

CONT. →

Statutory compensation rates for benefits

TIBs – 70% of AWW, unless an employee makes less than \$10/hour, then 75% for first 26 weeks

IIBs – 70% of AWW

SIBs – 80% of 80% of the difference between the pre- and post- AWW

LIBs – 75% of AWW

Death benefits – 75% of AWW

¹⁰ Texas Labor Code §408.083.

Access To Adequate, Equitable, Timely Income Benefits

like first responders are now having their benefits capped compared to previous years (see Table 8).¹¹

How long do benefits last? The duration of benefit payments depends on the type of benefit. Some benefits like TIBs and SIBs can cease once an injured employee returns to work, while benefits like IIBs are paid based on the employee's impairment rating. Benefits can be paid weekly (TIBs, IIBs, LIBs, death benefits) or paid monthly (SIBs). Injured employees and beneficiaries can request that benefits be paid via direct deposit or an access card if certain conditions are met.

Importance of Returning to Work. Unless an injured employee qualifies for Lifetime Income Benefits (LIBs), an injured employee's eligibility to receive income benefits ends at 401 weeks from the date of their injury.¹² Additionally, being off work for an extended period of time reduces the likelihood of injured employees returning to work.

DWC's 2022 Biennial Report shows that return to work rates have improved in Texas over the last decade. Results from the 2022 Workers' Compensation Network Report Card reported that overall injured employees treated in networks had higher return-to-work rates than injured employees treated outside of networks. In 2020, 83 % of injured employees returned to work within six months.¹³ Employee wage recovery indicates employees who return to work within six months post-injury return to pre-injury wage levels faster than employees who do not return to work within six months. This highlights the need for better coordination between system participants.

Income benefit costs. Income benefit costs are generally a function of two components: the amount of money in wages an employee earns and the duration of income benefit payments. Texas's income benefit costs per claim are lower than other states (about 35% lower for mature claims with at least 36 months of experience post-injury).¹⁴ System features such as the statutory prohibition of lump sum settlement of benefits, lower caps on maximum benefits, and the method for calculating the duration of IIBs (using only an injured employee's impairment rating), coupled with a strong Texas economy that provides return-to-work opportunities to injured employees contribute to these lower costs.¹⁵

Income Benefit Cost Comparison

Texas - \$12,982

Median State - \$19,865

Difference - 35%

Source: Workers' Compensation Research Institute, *CompScope™ Benchmarks for Texas, 22nd Edition, 2022.*

Note: Injury year 2018 claims with > 7 days of lost time and 36 months of claims experience.

¹¹ In Texas, the maximum and minimum benefit rates are based on the State Average Weekly Wage (SAWW), which is set statutorily at 88% of the average weekly wage of all employees covered by unemployment insurance as determined by the Texas Workforce Commission (see Texas Labor Code §408.047). This is lower than most states, which set their maximum benefit rates at 100% of the SAWW.

¹² Texas Department of Insurance, Division of Workers' Compensation, *Biennial Report to the 88th Legislature, 2022.*

¹³ Texas Labor Code §§408.047, 408.061 and 408.062 provides the methodology for calculating the minimum and maximum benefit rates.

¹⁴ See Workers' Compensation Research Institute, *CompScope™ Benchmarks for Texas, 22nd Edition, 2022.*

¹⁵ In Texas, TIBs are paid while an injured employee is off work due to a work-related injury; however, IIBs are paid based on the injured employee's impairment rating. Each percentage point of impairment = 3 weeks of benefits. Most states use impairment ratings as a basis for paying permanent partial income benefits (IIBs in Texas), but some adjust these impairment ratings using factors such as employee's level of education or occupation.

Percentage Of Injured Employees Whose TIBS Payments Were Capped By the Statutory Maximum Benefit

TABLE 8

Fiscal Year of Injury	All Injured Employees	First Responders
2007	14%	16%
2021	23%	40%

Source: Texas Department of Insurance, Division of Workers' Compensation, 2022.

First Responders



First Responders

The Texas workers' compensation system provides specific resources for first responders, including peace officers, firefighters, and emergency medical technicians. Certain statutes also apply to county jailers, detention officers, and volunteer first responders if they have workers' compensation coverage. Most first responders have workers' compensation coverage through political subdivisions (Chapter 504, Texas Labor Code), but first responders also work for various State of Texas agencies and public universities (Chapters 501 – 503, and 505).

OIEC has a dedicated first responder liaison, who is highly trained and experienced with workers' compensation issues affecting first responders. In FY 2022, OIEC assisted 474 first responders with their claims. Employers of first responders are required to post a workplace notice explaining how to contact OIEC's first responder liaison.

OIEC's First Responder Liaison
firstresponderhelp@oiec.texas.gov
(512) 804-4173 or 1-866-393-6432

Over the years the Texas Legislature has made several changes to the Workers' Compensation Act and the Texas Government Code for first responder workers' compensation claims. These changes include:

- Designating certain diseases in Chapter 607, Texas Government Code that are presumed to be work related for full-time first responders that meet certain conditions and allowing their insurance carriers to extend the timeframe to investigate these claims if they provide notice;
- Extending coverage for post-traumatic stress disorder claims if the disorder is caused by multiple events on the job – limited to first responders who work for political subdivisions;
- Providing death benefits to the spouse of a first responder for life regardless of remarriage – includes first responders who work for the State and political subdivisions, as well as intrastate fire mutual aid system team members or a regional incident management team member;
- Expediting medical benefits and medical disputes - limited to first responders who work for political subdivisions; and
- Waiving sovereign immunity to allow first responders defined in Texas Government Code §421.095 to sue a governmental entity for discrimination involving a workers' compensation claim – damages are limited under Labor Code §504.002.

Diseases with statutory presumptions for first responders

(see Government Code, Chapter 607)

- Preventative immunization reactions (including smallpox or other diseases)
- Tuberculosis and other respiratory illnesses
- Heart attacks/strokes
- Certain cancers (excludes peace officers)
- COVID-19 (until September 1, 2023) (includes county jailers and detention officers)

Conclusion



The Texas workers' compensation system is a model in many ways, including lower claim costs, affordable insurance rates, lower attorney involvement and better return to work outcomes. Texas is also unique in its commitment to providing free assistance to unrepresented injured employees, and for creating an advocate for injured employees as a class. No other state offers the same level of assistance, education, and advocacy to injured employees.

OIEC ensures that injured employees have a voice in legislative and rule-making processes, important court cases, and personal assistance when a dispute arises with their insurance carrier. OIEC works to resolve most disputes prior to a DWC dispute proceeding, and employees choose OIEC assistance in about half of all disputes. OIEC appreciates the opportunity to present this biennial report to the 88th Texas Legislature on behalf of all injured employees.

This document is available online at www.oiec.texas.gov/resources/reports.html

The source for the data in the report comes from the Office of Injured Employee Counsel's internal workload reports and performance measure unless otherwise stated.
Some percentages may be rounded.



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